IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITON NO.2306 OF 2006

M/s.Tanu Healthcare Ltd.
Shri Giriraj Kishor Agarwal(Director) ..Petitioner.

V/s.

Union of India & Ors. ..Respondents.

Mr.V.M.Doiphode i/b. V.M. Doiphone for petitioner.

Mr.A.S. Rao with Ms.Ritu Singh for respondents.

CORAM : H.L.GOKHALE AND
J.P.DEVADHAR, JJ.

DATED : 28TH SEPTEMBER, 2006.

P.C. :-

Heard Mr.Doiphode in support of the petitioner. Mr.Rao appears for the respondents.

2. Petitioner seeks to challenge the order passed by the Settlement Commission to the extent it requires the petitioner to pay interest at the rate of 15% under its order dated 2nd May, 2006. This is a case where the petitioner had not honoured the export obligation and thereafter, approached the Settlement Cmmission with respect to the amount of customs duty. The duty was appropriately settled and the amount of the duty has already been paid. The Settlement Commission has granted immunity from penalty and prosecution. It has, however, awarded interest at the

rate of 15%. This has come to be challenged under the present petition.

3. While discussing the aspect of levy of interest, the Settlement Commission has specifically said that since the export obligation was not met, the applicant was liable to pay interest in terms of the bond executed by it to the DGFT. The Commission has however, noted that the rate of interest originally agreed at 24% was subsequently reduced to 15% p.a. vide public notice No.9/2002-2007 dated 22nd May, 2003 for all the pending cases of EO default. In view thereof, the Commission has levied interest at 15%.

4. Mr.Doiphode, learned counsel for the petitioner has drawn our attention to an order dated 24th July, 2006 passed by the Settlement Commission at Chennai in the case of M/s.Ceres India Ltd. The Commission has referred to a subsequent circular dated 30th March, 2005 issued by the Joint Director General of Foreign Trade. The relevant paragraph from the said Circular quoted in the order reads as follows:-

> " Attention is invited to para 2.46 of the Foreign Trade Policy regarding regularization of EO default and settlement of customs duty and interest through the Settlement Commission in the Central Board of Excise and Customs. It has been decided that the decision of the Settlement

> Commission, in so far as customs duty and interest thereon are concerned, may be complied with by the Licensing Authority in cases of EO default under intimation to the Adjudicating Authority for regularization purposes. "

5. Relying upon this particular paragraph in the case referred, the Settlement Commission at Chennai awarded interest at 10%. Mr.Doiphode, therefore, submits that in the instant case also, the interest be reduced to 10%. This is an alternate plea of the petitioner.

6. We had an occasion to refer to the Commerce Ministry Circular dated 22nd May, 2003 in another matter which came before us yesterday i.e. Writ Petition No.6238 of 2006 with Writ Petition No.6242 of 2006 on the Appellate Side in the case of Rexford Electronics & Controls Ltd. V/s. The Union of India & Ors. We noted that the apart from the Commerce Ministry circular, as far as the bond given by the party is concerned, there is a Judgment of the Calcutta High Court in the case of **Commissioner of Customs (Port) V/s. Settlement Commission, Customs and Central Excise** reported in **2005 (179) E.L.T. 386 (Cal.)**. The High Court has held that payment of interest under the bond is a contractual obligation and the Settlement Commission has no power to grant immunity to interest

covered by such bonds.

7. The Circular dated 30th March, 2005 referred by the Settlement Commission at Chennai, does not any where give such powers to reduce the rate of interest nor does it reduce in any manner whatsoever. It is, therefore, not possible to accept this plea of Mr.Doiphode to interfere wih the award of interest at 15% or to reduce it to 10%.

8. The second submission of Mr.Doiphode is that the Petitioner had given a bank guarantee earlier and the same could have been encashed. He has drawn our attention to a letter date 28th August, 2004 written by the petitioner to the Deputy D.G.F.T. and has drawn our attention to paragraphs 23 and 27 thereof. Paragraph 23 states that the department did not encash the bank guarantee which was given, whereunder amount of Rs.7,87,000/- had been secured. Now, what is material to note is that the bank guarantee had expired in the meanwhile on 17th March, 2001 which has been noted in the discussion on payment of interest by the Settlement Commission.

9. In view thereof, we do not find any substance in the contention of Mr.Doiphode. Petition is, therefore, dismissed.

(H.L.GOKHALE, J.)

(J.P.DEVADHAR, J.)